ployer for the wrong he suffers by awarding him compensatory damages for the breach. *Britton* v. *Turner, supra.*

DAMAGES—MENTAL ANGUISH—FAILURE TO DELIVER COFFIN.—The defendant negligently failed to deliver a coffin ordered by the plaintiff in time for the burial. Full compensation was made for the pecuniary loss occasioned by the delay, and this suit is brought to recover for the mental anguish caused the plaintiff. *Held,* there can be no recovery. *Southern Express Co.* v. *Byers,* 36 Sup. Ct. Rep. 410.

There has been much confusion and uncertainty in the decisions as to whether one can recover for the mental anguish occasioned by the breach of a contract. It has been held that mental anguish is not a proper element of damages in such cases. *Beaulieu* v. *Great Northern R.,* 103 Minn. 47, 114 N. W. 353, 19 L. R. A. (N. S.) 564. Where one is advised of the importance of a contract and the damages which will result from its breach, such resulting damages are recoverable. *Hadley* v. *Baxendale,* 9 Exch. 341. It would seem to follow that where the contract is of such a nature that mental suffering would naturally result from its breach, the mental suffering would constitute a proper element of damages. *Cumberland T. & T. Co.* v. *Quigley,* 129 Ky. 788, 112 S. W. 897, 19 L. R. A. (N. S.) 575. When other than pecuniary benefits are contracted for, other than pecuniary standards should be applied in ascertaining the damages resulting from the breach. See *Wadsworth* v. *W. U. Tel. Co.,* 86 Tenn. 695, 8 S. W. 574. And even those courts which deny the right to recover for mental anguish recognize a supposed exception to the rule in the case of a breach of promise of marriage, which naturally results in some injury to the feelings, and which is an action sounding in tort. *Coolidge* v. *Neat,* 129 Mass. 146. And it has been held that one can recover for the mental anguish occasioned by the delay in the transportation of a corpse. *Hale* v. *Bonner,* 82 Tex. 33, 17 S. W. 605, 14 L. R. A. 336, 27 Am. St. Rep. 850.

The point involved in the principal case has been most frequently discussed in cases where there was a failure to promptly deliver a telegram announcing the death or sickness of a near relative. The courts are sharply divided on the right of one to recover for the mental suffering occasioned by such delay—the federal courts and a majority of the state courts deny any such right. *W. U. Tel. Co.* v. *Choteau,* 28 Okla. 664, 115 Pac. 879, Ann. Cas., 1912D, 824, 49 L. R. A. (N. S.) 206. These decisions are based on the ground that there can be no recovery for mental anguish at common law; and, chiefly, on the further ground that it would be impossible to ascertain the extent of the damage, thus opening the door to fraud. *W. U. Tel. Co.* v. *Choteau, supra.* Once granting, however, that mental anguish was suffered, and from the very nature of the transaction it would seem that mental suffering would be occasioned by the delay, it does not seem that a recovery can be denied on the ground that the damage was uncertain. There are many cases in which the law gives damages when it is impossible to ascertain with certainty the extent of the damage suffered, e. g., recoveries for personal injuries. *Richmond Ry. & Electric Co.* v. *Garthright,* 92 Va. 627, 24 S. E. 267. Mental

suffering certainly occasions as much injury as physical suffering. See *Head* v. *G. P. Ry.*, 79 Ga. 358, 360, 7 S. E. 217, 11 Am. St. Rep. 434. It is now generally agreed that mental anguish when accompanied by even slight physical injury is a proper element of damages. *Simone* v. *Rhode Island Co.*, 28 R. I. 186, 66 Atl. 202, 9 L. R. A. (N. S.) 740; *Yates* v. *South Kirby, etc., Co.*, (1910) 2 K. B. 538. And there seems to be no valid reason why mental suffering alone should not give a cause of action. The fear that such a doctrine would result in excessive verdicts has not been realized, as an examination of the cases in the states allowing a recovery for mental anguish clearly shows. See *Cumberland T. & T. Co.* v. *Quigey, supra.*

DURESS—CARRIERS—REFUSAL TO CARRY CATTLE.—A carrier, whose line was the only outlet to a market for the shipper's cattle, refused to receive certain cattle for shipment until the shipper had signed a bill of lading containing a false recital that some of the cattle were received in bad condition. The cattle were injured through the negligence of the carrier, and an action was brought by the shipper for damages. *Held*, such refusal to receive cattle without a false recital in the bill of lading constitutes duress, and the contract limiting its liability is voidable. *Missouri, K. & T. Ry. Co.* v. *Pacheco* (Tex. Civ. App.), 185 S. W. 1051.

Formerly, duress at law existed only where the conditions surrounding the transaction were naturally calculated to deprive a courageous man of his free will; and the circumstances necessary to that condition were distinctly fixed by law. Under this rigorous and harsh rule of the old common law, it was possible to avoid a contract for duress only when one had been forced into the contract upon a well grounded apprehension of losing his life or limb or of imprisonment. A fear of battery or of having one's house burned or property destroyed was not duress. 2 COKE'S INST. 483. See *Edwards* v. *Handley*, Hardin (Ky.) 602, 3 Am. Dec. 745; *Hatter* v. *Greenlee*, 1 Port. (Ala.) 222, 26 Am. Dec. 370; *Harris* v. *Carmody*, 131 Mass. 51, 41 Am. Rep. 188; *Joannin* v. *Ogilvie*, 49 Minn. 564, 52 N. W. 217, 32 Am. St. Rep. 581, 16 L. R. A. 376.

The harsh rule of the old common law soon gave way to a somewhat more liberal doctrine. This doctrine was that duress existed under such circumstances as would deprive an ordinary person of his free will. Even under this rule, which was practically universal, the force or threats necessary to constitute duress—an essentially relative term, were measured by a fixed and unbending test. Accordingly, the resistance required of a weak and strong man alike was that which would be offered by a man of ordinary firmness. 2 GREENLEAF, EV., § 301; *Harmon* v. *Harmon*, 61 Me. 227, 14 Am. Rep. 556; *Morse* v. *Woodworth*, 155 Mass. 233, 29 N. E. 525; *Horton* v. *Bloedorn*, 37 Neb. 666, 56 N. W. 321.

The modern view is that duress exists wherever the injured party is actually deprived of his free will by being put in fear by the other party to the transaction and advantage is thereby taken of him. *Central Bank* v. *Copeland*, 18 Md. 305; *Eadie* v. *Slimon*, 26 N. Y. 9; *Galusha* v. *Sherman*, 105 Wis. 263, 81 N. W. 495, 47 L. R. A. 417; *Cribbs* v. *Sowles*, 87 Mich. 340, 49 N. W. 587, 24 Am. St. Rep. 166.